

Exhibit 1

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<p>1 UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF MASSACHUSETTS 3 4 CIVIL ACTION NO. 00-12279EFH 5 6 ----- 7 MARY ANNE MCGUIRE, RUTH SCHIAVONE : 8 and JEAN B. ZARRELLA, : 9 Plaintiffs : 10 vs. : 11 THOMAS F. REILLY, ATTORNEY GENERAL OF THE : 12 COMMONWEALTH OF MASSACHUSETTS; PHILIP A. : 13 ROLLINS, DISTRICT ATTORNEY OF BARNSTABLE : 14 COUNTY, DUKES COUNTY, AND NANTUCKET COUNTY; : 15 GERARD D. DOWNING, DISTRICT ATTORNEY OF : 16 BERKSHIRE COUNTY; PAUL F. WALSH, JR., : 17 DISTRICT ATTORNEY OF BRISTOL COUNTY; : 18 KEVIN M. BURKE, DISTRICT ATTORNEY OF ESSEX : 19 COUNTY; ELIZABETH D. SCHEIBEL, DISTRICT : 20 ATTORNEY OF FRANKLIN COUNTY AND HAMPSHIRE : 21 COUNTY; WILLIAM M. BENNETT, DISTRICT : 22 ATTORNEY OF HAMPDEN COUNTY; MARTHA COAKLEY, : 23 DISTRICT ATTORNEY OF MIDDLESEX COUNTY; : 24 WILLIAM R. KEATING, DISTRICT ATTORNEY OF : NORFOLK COUNTY; MICHAEL J. SULLIVAN, : DISTRICT ATTORNEY OF PLYMOUTH COUNTY; : RALPH C. MARTIN, II, DISTRICT ATTORNEY : OF SUFFOLK COUNTY; AND JOHN J. CONTE, : DISTRICT ATTORNEY OR WORCESTER COUNTY, : Defendants : -----</p> <p>17 WILLIAM B. EVANS, a witness 18 called on behalf of the Plaintiffs, taken 19 pursuant to the applicable provisions of the 20 Massachusetts Rules of Civil Procedure, 21 before Grace E. Holden, RPR, and Notary 22 Public in and for the Commonwealth of 23 Massachusetts, at the offices of Thomas M. 24 Harvey, Esq., One Constitution Plaza, Charlestown, Massachusetts, on Wednesday, May 22, 2002, commencing at 10:09 a.m.</p> <p>MELVIN LIPMAN, COURT REPORTER 101 TREMONT STREET SUITE 700 BOSTON, MASSACHUSETTS 02108</p>	<p>1 I N D E X 2 3 Witness Direct Cross Redirect Recross 4 WILLIAM B. EVANS 5 by Mr. Harvey 4 - 94 97 - 98 6 by Mr. Porter 95 - 96 7 8 9 10 11 12 E X H I B I T S 13 14 No. Description Page 15 1 Photocopy of Mass General Laws, 16 Chapter 266, Section 120B-1/2, 17 two pages. 27 18 2 PPLM job description protocol, 19 two pages. 63 20 3 State Defendants Supplemental 21 Disclosures, six pages. 72 22 4 State Defendants Amended and 23 Supplemental Responses to 24 Plaintiffs' First Set of Interrogatories, 15 pages. 86</p>
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<p>1 APPEARANCES: 2 3 LAW OFFICES OF THOMAS M. HARVEY 4 Thomas M. Harvey, Esq. 5 One Constitution Plaza 6 Boston, Massachusetts 02129 7 on behalf of the Plaintiffs 8 9 BOSTON POLICE 10 OFFICE OF LEGAL ADVISOR 11 Betsy J. Facher, Esq. 12 One Schroeder Plaza 13 Boston, Massachusetts 02120 14 on behalf of the Deponent 15 16 THE COMMONWEALTH OF MASSACHUSETTS 17 Office of the Attorney General 18 William M. Porter, Assistant Attorney General 19 One Ashburton Place 20 Boston, Massachusetts 02108 21 on behalf of the Defendants 22 23 24</p>	<p>1 MR. HARVEY: Do you want to do the 2 usual stipulations? Read and sign, waive the 3 notary? 4 MS. FACHER: That's fine. 5 MR. HARVEY: The usual meaning all 6 objections, except as to the form of the 7 question, reserved until the time of trial 8 and motions to strike are reserved until the 9 time of trial. 10 WILLIAM B. EVANS, having been 11 duly sworn by the Notary Public, testified as 12 follows: 13 DIRECT EXAMINATION 14 BY MR. HARVEY: 15 Q. Can you please state your name? 16 A. William, middle initial B, as in Brian, 17 Evans, E-v-a-n-s. 18 Q. And you're a captain in the Boston Police 19 Department? 20 A. Yes. 21 Q. Captain Evans, my name is Thomas Harvey. I 22 represent the plaintiffs in the case of 23 McGuire et al versus Reilly et al. I'll be 24 asking you some questions today.</p>

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1 is Superintendent of the Bureau of Field
 2 Services.
 3 Q. And Planned Parenthood on Commonwealth Avenue
 4 comes under your district?
 5 A. Yes.
 6 Q. As a captain of that district what are your
 7 duties?
 8 A. My duties are administrative as far as
 9 operating the station. I have approximately
 10 125 sworn officers as well as civilians
 11 working under my command. I direct their
 12 daily activities in areas of, you know,
 13 crime, crime prevention, partnership with the
 14 communities.
 15 Q. Do you have any particular duties with regard
 16 to abortion clinics or is there just one
 17 abortion within your district?
 18 A. Yes.
 19 Q. Do you have any particular duties with regard
 20 to that abortion clinic?
 21 A. No duties, specific duties dealing with the
 22 clinic, no.
 23 Q. Do you have any officers that are assigned
 24 specifically to deal with personnel at that

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1 abortion clinic?
 2 A. None. On any given day it could be any
 3 officer. There's no one particularly
 4 assigned. At night I do have one detective,
 5 Detective Russell Grant, who deals with a lot
 6 of possible criminal action coming out of
 7 that establishment but no, no per se except
 8 that one detective.
 9 Q. Would he be considered the liaison with
 10 Planned Parenthood?
 11 A. Yes.
 12 Q. Why is that only at night?
 13 A. Well, he's a detective and, you know, we, to
 14 establish a rapport with Planned Parenthood
 15 and rather than them always calling several
 16 different offices we have him doing it at
 17 night.
 18 Q. His name is Russell Grant?
 19 A. Russell Grant.
 20 Q. Are the detectives all lieutenants or they
 21 could be a patrol officer, could be a
 22 detective? How does it work?
 23 A. All patrolmen. You know, they've never gone
 24 above patrol officer. Now we have a test to

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1 become a rank detective which is just above
 2 police officer but I want to say when Russell
 3 was appointed I'm sure he's been a detective
 4 a long time before actually there was an
 5 exam, so.
 6 Q. Now, on Saturday morning in front of Planned
 7 Parenthood there's more activity than other
 8 days. Is that right?
 9 A. Yes.
 10 Q. Can you describe for us what the activity
 11 is? This is 1055 Commonwealth Ave.
 12 A. 1055. On an average Saturday we probably
 13 have maybe 10 to 15 individuals outside
 14 displaying signs and, you know, trying
 15 basically to talk to people going in and out
 16 of that clinic trying to prevent them from
 17 going in there.
 18 Q. How often have you been out there on a
 19 Saturday morning?
 20 A. I've been out there, when it initially came
 21 to us back in I think probably 1998 I was
 22 out there very frequently, almost every
 23 Saturday. Since that time I'm lucky I'm out
 24 there once a month.

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1 Q. How many officers do you have assigned out
 2 there on a given Saturday?
 3 A. On an average Saturday I would say one,
 4 possibly two on an average Saturday. Now,
 5 the second Saturday is different.
 6 Q. The second Saturday is different how come?
 7 A. We have a much larger protest the second
 8 Saturday of every month. We get
 9 approximately 100 to 150 protesters coming
 10 from Brookline, I think where they go to
 11 mass, come over from Babcock Street onto
 12 Commonwealth Ave and they go outside and they
 13 say the rosary and we also have about a dozen
 14 usually pro-abortion people who are also out
 15 there.
 16 Q. Are the pro-abortion people out there on
 17 Saturdays when it's not a second Saturday?
 18 A. No, I don't usually see them out there.
 19 Q. And on a second Saturday how many officers do
 20 you typically have assigned there?
 21 A. Typically we have a sergeant and four to five
 22 officers.
 23 Q. Do you have any particular expertise with
 24 dealing with abortion protesters?

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1 about--
 2 A. My officers.
 3 Q. Exactly.
 4 A. Yes, they have.
 5 Q. Do you recall any of the circumstances?
 6 A. Again, I don't think I did it myself but the
 7 circumstances basically would be people just
 8 getting up in people's face walking in and we
 9 would go up to them and say please don't do
 10 that and then usually they cooperate that we
 11 don't have to take further action.
 12 Q. Have you personally had to warn anybody?
 13 A. I don't recall personally, not since the
 14 Buffer Zone Law legislation.
 15 Q. Prior to this buffer zone legislation we're
 16 talking about there were numerous other laws
 17 pertaining to activity out in front of the
 18 abortion clinics?
 19 A. Yes.
 20 Q. There was the federal law called FACE?
 21 A. Right.
 22 Q. There was also a state law regarding access
 23 to clinics?
 24 A. Right.

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1 Q. And there are also laws prohibiting assault?
 2 A. Sure.
 3 Q. And laws prohibiting harassment, criminal
 4 laws --
 5 A. Yes.
 6 Q. -- prohibiting harassment?
 7 A. Yes.
 8 Q. Has this law added anything at all to the
 9 arsenal of law enforcement?
 10 MS. FACHER: Objection.
 11 MR. PORTER: Objection.
 12 Q. You can answer.
 13 A. I think it does keep a lot of the, I
 14 shouldn't say a lot, some of protesters out
 15 of the area of the immediate doorway. You
 16 know, I think there's clearly, it's clearly
 17 painted on the sidewalk and I think for the
 18 most part I think the protesters respect that
 19 zone.
 20 So my answer would be I think it's
 21 helped keep out the clutter in front of the
 22 place.
 23 Q. Now, there was a period of time when Planned
 24 Parenthood was at that location on

1 Commonwealth Avenue when the Buffer Zone Law
 2 was not in effect. Correct?
 3 A. Yes.
 4 Q. During that period of time did your
 5 department have cause to arrest individuals
 6 in front of the clinic or in back of the
 7 clinic for criminal violations?
 8 A. Yes.
 9 Q. Can you tell us what those criminal
 10 violations were?
 11 MR. PORTER: This is prior to the
 12 law?
 13 MR. HARVEY: This is the period
 14 before the buffer zone legislation was in
 15 effect and when Planned Parenthood was at
 16 that location.
 17 MR. PORTER: On 1055 Commonwealth?
 18 MR. HARVEY: 1055, yes.
 19 A. We have, I can't recall what the actual
 20 charges are. I know the person but I want to
 21 say--
 22 MS. FACHER: If I can just interject
 23 here? I would object to relating any CORE
 24 information about individual people who were

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1 arrested.
 2 A. I mean basic maybe disturbing the peace or
 3 disorderly person. I want to say it's
 4 probably those were the charges.
 5 Q. How many times were arrests made?
 6 A. Maybe two, two or three. Not many.
 7 Q. Were those persons prosecuted?
 8 A. Yes.
 9 Q. Were they convicted?
 10 A. I, quite frankly I didn't follow whatever
 11 happened with them.
 12 Q. Do you know the officers or can you recall
 13 the officers that made the arrests?
 14 A. I remember one was done by Sergeant Hobson
 15 who is assigned not to me, he's assigned to
 16 District 4, the South End. Sometimes when
 17 we're shorthanded, again we're areas, the
 18 sergeant in that area has to come out. And I
 19 know he was one of the officers who arrested
 20 one of these individuals.
 21 Q. Was the person arrested a pro-life person?
 22 A. No.
 23 Q. Do you remember the circumstances of what the
 24 arrest were?

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1 A. I think it was just being disorderly outside
 2 the premises. I think the sergeant asked her
 3 to do something and I, if I remember
 4 correctly, and again I think it was
 5 disturbing the peace.
 6 Q. Was it somehow related to the abortion clinic
 7 to your knowledge?
 8 A. Yes. Yes.
 9 MR. PORTER: Could you state the
 10 sergeant's name again, please?
 11 WITNESS: His name is, you want the
 12 first name? Larry. Lawrence Hobson.
 13 Q. Other than your meeting Ruth, other than your
 14 meeting Jean Zarrella at the police station--
 15 A. Ruth, isn't it?
 16 Q. I'm sorry.
 17 A. Ruth.
 18 Q. Other than meeting Ruth Schiavone at the
 19 police station have you had other occasions
 20 to talk with her?
 21 A. Outside the clinic I believe I've talked to
 22 her a few times.
 23 Q. Can you recall those conversations at all?
 24 A. No, not really.

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1 Q. Has Planned Parenthood ever complained to you
 2 about perceived violations of the Buffer Zone
 3 Law which police have not taken action on?
 4 A. They've made complaints about, sometimes
 5 about some bumping and shoving going on
 6 outside the clinic, sometimes if people are
 7 hanging in their rear driveway inside the
 8 buffer zone, and a lot of times when we go
 9 down we just try to mediate it and prevent it
 10 from escalating.
 11 Q. Did Planned Parenthood have complaints during
 12 the period when it first began at the
 13 location but prior to the buffer zone being
 14 in effect?
 15 A. Yes.
 16 Q. What were the complain at that time?
 17 A. Same thing. People blocked the entrance,
 18 people getting up in the faces of people
 19 going in the back with their vehicles. The
 20 back, there's a private way that people enter
 21 and exit, you know, people getting up in
 22 their face yelling when these people are
 23 going into the building. The same type of
 24 behavior out front.

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1 We had obviously one individual,
 2 Barbara Bell, who is, you know, again, I get
 3 along, great relationship with her as far as
 4 she being very cooperative but there's a
 5 separate injunction to keep her 50 feet from
 6 it, so when she was around a lot there was
 7 constant complaints about keeping her at the
 8 distance that she should be at.
 9 Q. This is before the buffer zone?
 10 A. Before, yes. But there was also complaints
 11 about, you know, keeping them away from the
 12 doorway.
 13 Q. Is the injunction, to your knowledge, still
 14 in effect against her?
 15 A. Yes, I believe it is. I haven't seen her in
 16 quite some time but.
 17 MR. HARVEY: I would like to get this
 18 marked, please.
 19 (Exhibit No. 1 was marked.)
 20 Q. Captain, I'm going to give you a minute to
 21 review it. I'm going to ask you some
 22 questions about it. Starting down there.
 23 A. Oh, that, right.
 24 Q. I want you to focus on Section 2B.

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1 A. Employees or agents, there?
 2 Q. At the top of the next page.
 3 A. All right. Okay.
 4 MR. PORTER: Is that Exhibit 2?
 5 MR. HARVEY: Exhibit 1.
 6 A. Okay.
 7 Q. You've had a chance to read Section 2B of
 8 Chapter 266, Section 120E-1/2?
 9 A. Yes.
 10 Q. Now, there are at Planned Parenthood on these
 11 second Saturday mornings, there are Planned
 12 Parenthood escorts out there?
 13 A. Yes.
 14 Q. And the escorts are agents of Planned
 15 Parenthood?
 16 MR. PORTER: Objection.
 17 A. Yes.
 18 Q. The objections are just for the record.
 19 Unless your attorney tells you not to answer,
 20 then you can answer.
 21 MS. FACHER: You can answer to the
 22 extent that you know.
 23 A. Yes.
 24 Q. Based on this law are there circumstances

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1 A. Again, I'm a little, probably in the intent
 2 of the law it probably would be, it would
 3 be. Whether or not, again, we would enforce
 4 something like that, quite honestly we might
 5 stop them from doing it; but as far as taking
 6 enforcement action, we won't do anything.
 7 Q. And on that last example why don't, why
 8 wouldn't you enforce that?
 9 A. Because our policy for the most part, and we
 10 use it with both sides, is to warn them not
 11 to do that again and then if they should keep
 12 it up, being fair to both sides, which we
 13 usually do, we would take enforcement action,
 14 but we always first ask them to stop doing
 15 that.
 16 Q. But your view is the last one would be a
 17 violation of the law?
 18 A. It would be if they come within that 6 feet
 19 and they're, you know, trying to educate or
 20 counsel someone, sure.
 21 Q. So it depends on what they say whether they
 22 violate the law?
 23 A. Right.
 24 Q. Have you had any discussions with the

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1 Attorney General's Office about escort
 2 behavior?
 3 A. Yes.
 4 Q. What have the discussions been?
 5 A. If I can recall, just what type of behavior
 6 they're subject to also and whether they can
 7 actually, you know, violate this law.
 8 Q. What was the conclusion?
 9 A. If, yes, if they step out of the bounds of
 10 their employment they would be violating the
 11 law, yes.
 12 Q. That was the term I used before and you
 13 didn't like it.
 14 MR. PORTER: Objection, Mr. Harvey.
 15 The witness asked and answered the question.
 16 Q. You would agree with me then that at least
 17 the terminology as used by the Attorney's
 18 General's Office is scope of employment.
 19 Right?
 20 MS. FACHER: Objection.
 21 MR. PORTER: Objection. Asked and
 22 answered.
 23 A. You know, under their instructions of, yes,
 24 under the scope of their duties, why don't we

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1 use their duties out front.
 2 Q. All right. And the scope of their duties is
 3 not to counsel. Is that right?
 4 A. Not to counsel.
 5 Q. If they do counsel, that would be outside the
 6 scope of their duties?
 7 A. I believe it is.
 8 Q. So whether they're within the scope of their
 9 duties or not depends on the content of their
 10 words?
 11 MS. FACHER: Objection.
 12 MR. PORTER: Objection.
 13 A. Their words and their actions.
 14 Q. Because they could approach somebody within
 15 6 feet and say "hi, I'm here from Planned
 16 Parenthood, I'll help you in"?
 17 A. Right.
 18 Q. And that wouldn't be a violation?
 19 A. That's fine.
 20 Q. They could do the exact same thing and say
 21 abortion is good --
 22 A. Right.
 23 Q. -- and that would be a violation?
 24 A. Sure.

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1 MR. PORTER: Sorry to interrupt.
 2 Captain Evans, can you speak up a little
 3 bit? Ever since the HVAC went on I'm
 4 struggling. It's old age I think.
 5 Q. Have you ever seen an escort take a pamphlet
 6 that had been provided from a pro-lifer to a
 7 person entering the clinic? Let me restate
 8 that question.
 9 Have you ever seen a pro-lifer,
 10 pro-life protester hand a pamphlet to a
 11 person about to enter the clinic?
 12 A. Yes.
 13 Q. Have you ever seen a Planned Parenthood
 14 escort take a pamphlet from a person who was
 15 about to enter the clinic?
 16 A. I don't ever recall that.
 17 Q. What is the general atmosphere that you have
 18 observed out in front of the Planned
 19 Parenthood abortion clinic since the Buffer
 20 Zone Law has been put in effect?
 21 A. The general atmosphere?
 22 Q. Atmosphere. Is it peaceful? Is it hectic?
 23 Is it?
 24 A. No. It's, it's peaceful.

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1 Q. Is it any different from prior to the buffer
 2 zone being in effect?
 3 A. Just in the positioning of the protesters.
 4 Q. The general activity is the same?
 5 A. Yes.
 6 Q. The positioning means the protesters are now
 7 usually outside the zone?
 8 A. Yes.
 9 Q. Over the period of time since you've been
 10 involved in going to the clinic have you seen
 11 a lot of screaming?
 12 MR. PORTER: Objection.
 13 MS. FACHER: Objection.
 14 Q. By either side or passersby or anybody out in
 15 front of the clinic?
 16 A. On the second Saturday without a doubt
 17 there's a lot of screaming.
 18 Q. And screaming by whom?
 19 A. More by the people who are pro-abortion.
 20 They yell. They scream. They're very vulgar
 21 as opposed to the protesters. The
 22 anti-abortion people basically are saying the
 23 rosary.
 24 Q. Are you talking about escorts or some other

1 A. No. They are yelling at the people who are
 2 protesting on the other side.
 3 Q. I misunderstood you. Who is yelling at whom?
 4 A. The pro-abortion people are yelling at the
 5 older people who are protesting at Planned
 6 Parenthood. Their obscenities are not at the
 7 people going in the clinic, it's at the
 8 people who are protesting against Planned
 9 Parenthood.
 10 Q. So the vulgarities by the pro-abortion people
 11 are directed at the prayers?
 12 A. Right.
 13 Q. My question is regarding the pro-lifers that
 14 I think are referred to as sidewalk
 15 counselors, the people that are on the
 16 sidewalk --
 17 MR. PORTER: Objection.
 18 Q. -- that talk to the people that enter the
 19 clinic.
 20 A. Right.
 21 Q. My question concerning them is do you often
 22 times see or have you often times seen them
 23 yelling and screaming in the face of those
 24 people about to enter the clinic?

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1 people when you say vulgarities?
 2 A. It's the people, there's about a dozen people
 3 on the second Saturday of every month who
 4 show up who are pro-abortion. We put them in
 5 two separate pens. We have the anti-abortion
 6 and we have the pro-abortion. The pro-
 7 abortion are all young college age kids who
 8 they're the ones yelling the vulgarities.
 9 Q. And these pens are next to each other?
 10 A. Yes.
 11 Q. Are they on the street or on the sidewalk?
 12 A. One is on the sidewalk, one is on the street.
 13 Q. When you say pens, is this like the metal
 14 grating type of thing?
 15 A. Exactly.
 16 Q. So the yelling and screaming is not at
 17 patients about to enter the clinic?
 18 A. No.
 19 Q. Do you often times or have you often times
 20 seen the pro-life protesters yelling and
 21 screaming in the face of people about to
 22 enter the clinic?
 23 A. No.
 24 Q. Have you ever seen it?

1 A. A few of them, yes.
 2 Q. How often have you seen that?
 3 A. We see two individuals quite often doing it.
 4 Q. Who are those two individuals?
 5 A. Sheryl Fitzpatrick and Gay Guptil I think is
 6 her name. Those are the only two that seem
 7 to constantly do it.
 8 MR. PORTER: Do you happen to know
 9 how to spell her name?
 10 WITNESS: Fitzpatrick?
 11 MR. PORTER: The other name.
 12 WITNESS: Guptil, I want to say it's
 13 something like G-u-p-t-i-l-e. Gail.
 14 Q. Are they usually located in the front of the
 15 clinic or the back of the clinic?
 16 A. Most of the times I see them in the back but
 17 they're mobile, they're constantly walking
 18 from the back to the front, back to the
 19 front.
 20 Q. When you've seen them yell is it really up
 21 close in someone's face?
 22 A. They're, yes. I mean not so much yelling but
 23 right up in their face bothering them going
 24 in and out. I won't say it's yelling. It's

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1 going right up close to them and basically
2 talking to them. I won't say they're
3 yelling. They're more or less talking to
4 them.

5 Q. Those two would be the exceptions?

6 A. Yeah.

7 Q. Have you ever in your period of time going
8 out there to Planned Parenthood seen any
9 spitting by pro-lifers?

10 A. Never. I wouldn't tolerate spitting.

11 Q. With those exceptions of Gay Guptil and
12 Sheryl Fitzpatrick are the pro-lifers
13 peaceful?

14 MS. FACHER: Objection.

15 MR. PORTER: Objection.

16 A. I would say they are.

17 Q. Have you, again this is referring to you
18 personally, the time that you've been going
19 out there --

20 A. Right.

21 Q. -- have you seen occasions that where people
22 entering the clinic people appear to be upset
23 after speaking with pro-life people?

24 A. Yes.

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1 Q. How many times have you seen that?

2 A. Quite frequently.

3 Q. And is that in both the front and back of the
4 clinic?

5 A. Mostly in the front. More agitated from them
6 being right bothering them trying to go in.

7 Q. What is it that's said to them that upsets
8 them?

9 MR. PORTER: Objection.

10 A. I don't know. I'm never close enough to
11 actually hear what they're saying. But
12 they're basically riding them from half a
13 block away when they notice that here comes a
14 potential patient. They usually go right up
15 to them and basically go right next to them
16 and they'll talk to them all the way in to
17 where they get by the doorway.

18 Q. Do they offer them pamphlets?

19 A. Sometimes they have pamphlets in their hands.

20 Q. Have you ever seen Planned Parenthood escorts
21 line up abreast of each other right in front
22 of the clinic entrance?

23 A. Can you just clarify that, Tom? What do you
24 mean?

1 Q. Sure. Have you ever seen Planned Parenthood
2 escorts line up next to each other shoulder
3 to shoulder right on their property line in
4 front of the door, the entryway to Planned
5 Parenthood?

6 A. Usually they're not shoulder to shoulder.
7 They're basically just hanging around the
8 doorway inside the buffer zone.

9 Q. Do they stay there or do they move around
10 too?

11 A. They're mobile.

12 Q. So what's the typical scenario if someone may
13 recognize a patient down the street coming,
14 what occurs at that point?

15 A. What occurs, Tom, is if they see a potential
16 client, say, coming from a half a block away
17 they'll go out and try to greet them possibly
18 at the edge of the building on Comm Ave and
19 one, an agent will get on each side of that
20 person and walk them through to the doorway
21 and into the premises.

22 Q. What do the pro-lifers do?

23 A. Sometimes they go right up close to the agent
24 and they start talking and maybe they'll put

1 out an arm with a pamphlet and they'll stay
2 with them and sort of, you know, dog them
3 per se until they basically now get into the
4 buffer zone area where they back off.

5 Q. Do you ever hear the conversation?

6 A. No. No. For the most part it's, you know,
7 they're right up close to the agent and the
8 person.

9 Q. When you're out there do you typically stay
10 in a car or are you --

11 A. No, I'm out.

12 Q. -- out on the street?

13 A. Out and about. Usually in the street
14 watching the whole scenario.

15 Q. Do you have a place where you typically stay
16 or are you in different places?

17 A. I'm in different places. Sometimes I'm on
18 Comm Ave closer to one end of the building
19 and another time I'm right at the corner of
20 Comm Ave by the Starmarket, so.

21 Q. You're--

22 A. I'm--

23 Q. Sorry.

24 A. I'm not on the sidewalk close enough that I

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1 Q. Well, they can--
 2 MR. PORTER: Objection. He's not
 3 finished.
 4 Q. Go ahead.
 5 A. That other law basically allowed them without
 6 blocking their access to actually ride them
 7 all the way right into the door. The clinic
 8 access law clearly states blocking where, to
 9 me, dogging or, you know, hanging on their
 10 shoulder is allowed with the old law. This
 11 prevents them from actually riding them all
 12 the way to the minute they get inside the
 13 doorway.
 14 Q. But they can still ride them as long as
 15 they're not speaking?
 16 MR. PORTER: Objection.
 17 Q. Under this law. Correct?
 18 A. They can, yes.
 19 Q. They can. So it's really--
 20 A. With their consent.
 21 Q. Right. Right. Well, even without their
 22 consent, if they're not speaking that's
 23 allowed under this law, isn't it?
 24 A. Correct.

1 already prohibited?
 2 MR. PORTER: Objection.
 3 MS. FACHER: Asked and answered. It
 4 was asked before.
 5 A. It prohibits them from counseling them all
 6 the way up into the door which was the prior
 7 practice.
 8 Q. Counseling means speaking?
 9 A. Telling them not to go in there and, you
 10 know, have your baby and.
 11 Q. What do they typically say, the pro-life
 12 people?
 13 A. Well, you know, you know, "don't abort your
 14 baby," you know, "have it," "there's people
 15 out there who want babies." You know,
 16 basically just please don't go in there, God
 17 loves you.
 18 Q. Have you ever heard a pro-lifer swear at a
 19 person about to enter the clinic?
 20 A. No, never.
 21 Q. Have you ever heard a pro-life person use a
 22 racial epithet at a person about to enter the
 23 clinic?
 24 A. No.

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1 Q. So isn't it really the peaceful speaking
 2 that's prohibited under this law that wasn't
 3 before?
 4 MR. PORTER: Objection.
 5 Argumentative.
 6 A. I'm a little unclear on that.
 7 Q. Prior to this law any type of violence was
 8 already prohibited by criminal laws, wasn't
 9 it?
 10 A. Correct.
 11 Q. Prior to this law blockading access to
 12 clinics was already prohibited?
 13 A. Correct.
 14 Q. Under this law even without a person's
 15 consent another person could get in within
 16 6 feet of them and as long as he wasn't
 17 speaking there's no violation of the law.
 18 Correct?
 19 MS. FACHER: Objection.
 20 A. As long as there's no--
 21 Q. As long as there's no--
 22 A. -- blocking, blocking and counseling.
 23 Q. So other than peaceful speaking approaches
 24 what does this law prohibit that was not

1 MR. PORTER: Captain, I'm sorry,
 2 speak up a little.
 3 WITNESS: I'm sorry. Don't hesitate.
 4 MR. PORTER: No, I'm sorry.
 5 Q. Have you been to the Attorney General's
 6 Office to discuss this law, Buffer Zone Law?
 7 A. Yes.
 8 Q. How many times?
 9 A. Good question. I can remember once. It
 10 could have been twice but I remember one
 11 clearly.
 12 Q. Do you recall who was there?
 13 A. Patty Correa, Adam.
 14 Q. Adam Simms?
 15 A. Simms. And I think there was maybe an intern
 16 or something was there at the time. I'm not
 17 sure. There was three people.
 18 Q. Anyone from Planned Parenthood?
 19 A. No. And with me also was Sergeant Cook,
 20 James Cook, C-o-o-k, and Sergeant Charles
 21 O'Neill.
 22 Q. They're under your command?
 23 A. Yes.
 24 Q. Can you recall what was discussed?

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<p>1 MR. HARVEY: Yes.</p> <p>2 MS. FACHER: I think I have one</p> <p>3 also. This is where the Captain is</p> <p>4 designated as the one with knowledge.</p> <p>5 Q. Captain, I'm showing you Exhibit 3 which is</p> <p>6 entitled State Defendants Supplemental</p> <p>7 Disclosures Under Federal Rules of Civil</p> <p>8 Procedure 26A and I just want to direct your</p> <p>9 attention to where your name is on page</p> <p>10 three, 6(g) you are listed there.</p> <p>11 A. Yes.</p> <p>12 Q. On the next page, page four, you're listed</p> <p>13 under 8(a) and 10(b).</p> <p>14 A. Yeah.</p> <p>15 Q. And I just want to ask you about that.</p> <p>16 A. Okay.</p> <p>17 Q. Now, the Attorney General has designated you,</p> <p>18 in looking at page three, as a person that</p> <p>19 has knowledge regarding protester conduct and</p> <p>20 effect on patients and clinic personnel at</p> <p>21 Planned Parenthood Boston, and then next to</p> <p>22 your name under (b) it says (protester</p> <p>23 conduct).</p> <p>24 MR. PORTER: Objection. Under</p>	<p>1 A. Yes.</p> <p>2 Q. What were the discussions?</p> <p>3 A. Our discussions, again, were about conduct</p> <p>4 that has, you know, observable conduct that</p> <p>5 we've seen outside of 1055 Comm Ave.</p> <p>6 Q. When did you have those discussions?</p> <p>7 A. I want to say approximately four to six</p> <p>8 months, in that period, ago.</p> <p>9 Q. With whom did you discuss?</p> <p>10 A. With who from the Attorney General's?</p> <p>11 Q. Yes.</p> <p>12 A. Patty Correa, Adam, and there was another</p> <p>13 girl in there. I don't know if she was a</p> <p>14 student intern or.</p> <p>15 Q. Okay.</p> <p>16 A. And then Sergeant Cook as well as Sergeant</p> <p>17 O'Neill were present.</p> <p>18 Q. Okay. And what was the behavior that you</p> <p>19 talked about as far as testifying?</p> <p>20 A. About what we see outside the clinic?</p> <p>21 Q. Yes.</p> <p>22 A. Was behavior such as the two individuals I</p> <p>23 had mentioned before, Gail and Sheryl</p> <p>24 continually being at the back bothering</p>
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<p>1 Section B, is that where you are?</p> <p>2 MR. HARVEY: I said G.</p> <p>3 MR. PORTER: No. Is the main</p> <p>4 section B?</p> <p>5 MR. HARVEY: I'm sorry. That's</p> <p>6 correct, under witnesses.</p> <p>7 MR. PORTER: So the designation there</p> <p>8 is the following individuals may have</p> <p>9 discoverable information relevant to the</p> <p>10 State Defendants defenses regarding the</p> <p>11 following topics.</p> <p>12 MR. HARVEY: Okay.</p> <p>13 MR. PORTER: May have discoverable</p> <p>14 information.</p> <p>15 Q. Okay. Captain, you see on page two (b)?</p> <p>16 Attorney Porter just pointed that out.</p> <p>17 A. Yes.</p> <p>18 Q. Do you have discoverable information</p> <p>19 regarding protester conduct?</p> <p>20 MR. PORTER: Objection to the form.</p> <p>21 Q. Let me strike that.</p> <p>22 Have you had discussions with the</p> <p>23 Attorney General's Office regarding possible</p> <p>24 testimony at a trial?</p>	<p>1 people going into the premises when they're</p> <p>2 in their motor vehicles; behavior such as</p> <p>3 wearing Boston Police caps on their head, to</p> <p>4 the point that some people might interpret</p> <p>5 them to be police officers is how we thought</p> <p>6 that posed a problem; and general sometimes</p> <p>7 pushing and shoving outside regarding the</p> <p>8 escorts and some of the protesters.</p> <p>9 Q. Were the discussions limited to the behavior</p> <p>10 of Sheryl Fitzpatrick and Gay Gupta?</p> <p>11 MR. PORTER: Objection.</p> <p>12 A. They wouldn't, no. There was also, those</p> <p>13 were the two main people that we brought up</p> <p>14 but general behavior of some of the other</p> <p>15 protesters was also discussed.</p> <p>16 Q. What was that behavior?</p> <p>17 A. Just, you know, being in the buffer zone,</p> <p>18 sometimes approaching the patients whether</p> <p>19 they're in the buffer zone or outside the</p> <p>20 buffer zone, and some, you know, general</p> <p>21 sometimes pushing and shoving on both sides.</p> <p>22 Q. And this says, in going on, both before and</p> <p>23 after the effective date of the buffer zone?</p> <p>24 A. Yes.</p>

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<p>1 Q. Have you had occasions to arrest Gay Guptil 2 or Sheryl Fitzpatrick? 3 MS. FACHER: Objection. 4 A. Yes. 5 MS. FACHER: The Police Department's 6 position is we are not authorized to release 7 CORE information about individuals. The 8 identity of individuals who have been 9 arrested, that information has to be released 10 through the Criminal Access Board. We can't 11 release that information. 12 MR. HARVEY: Can we go off the record 13 just a second? 14 (Discussion was held off the record.) 15 MR. HARVEY: Go back on. 16 MS. FACHER: Just to clarify that 17 further on the record. I mean certainly 18 if-- that's our position at this point. If 19 you want to pursue further discussions about 20 how we would obtain that information within 21 the constructs of the law, I am happy to 22 engage in those discussions but at this point 23 we need to protect the CORE information of 24 individuals.</p>	<p>1 their identities? 2 MS. FACHER: You know, I hear your 3 position and I hope that you'll hear mine. 4 I'm standing by my objection and instructing 5 the Captain not to answer. 6 MR. PORTER: My sense is, I don't 7 know the CORE law, I definitely have to defer 8 to Ms. Facher on it, but it says what it 9 says. Right? 10 MS. FACHER: The law, it prohibits us 11 disclosing information and we under the law 12 are not authorized to disclose information. 13 Whether as a practical matter you may know 14 the identity of someone, it doesn't seem to 15 be of any help. 16 MR. PORTER: It doesn't permit you 17 exceptions? 18 MS. FACHER: That's my feeling in 19 understanding the law at this point. If I'm 20 incorrect, I'm happy to amend my position at 21 a later date. 22 Q. Captain, referring to page four under 8(a), 23 have you had discussions with the Attorney 24 General's Office regarding Boston Police</p>
Page 78	Page 80
<p>1 Q. Captain, you referred to two people that wear 2 Boston Police caps. Have those person ever 3 been arrested? 4 MS. FACHER: Objection. 5 Q. For their activity outside of abortion 6 clinics? 7 A. One of them has. 8 Q. Is that the smaller one or the taller one? 9 MS. FACHER: Objection. I would 10 instruct you-- 11 A. How do you know there's a difference? 12 MS. FACHER: I would instruct you not 13 to answer these questions. These are going 14 to identifying the identities of people who 15 have been arrested. 16 My position is that is CORE protected 17 information. I mean if you go about it in 18 any obscure route to identify who of two 19 people who have been named, we're still 20 getting to the same point and I would 21 instruct the Captain not to answer. 22 MR. HARVEY: If I know who they are 23 and everyone else in this room knows who they 24 are how is there a problem with releasing</p>	<p>1 Department policies and practices on 2 enforcement of the Buffer Zone Law regarding 3 your testimony at upcoming trial? 4 A. Yes. 5 Q. What are you going to be testifying to, if 6 you know? 7 MR. PORTER: Objection. 8 A. I'm going to be testifying to the fact that 9 we're down there watching closely the law and 10 what it states and I'm going to testify that, 11 you know, we do see violations obviously but 12 we try not to arrest anyone. We always try 13 to mediate it and warn and should it reoccur, 14 then we will take enforcement action. 15 So, you know, as far as the practices 16 go, yes, we do watch the enforcement and the 17 conduct down there but we don't take strict 18 interpretation as far as enforcing it. 19 Q. When you say reoccur are you talking about a 20 specific individual? 21 A. Anyone, anyone down there. If we have to 22 speak with them once or twice and then they 23 continue to exhibit that behavior that we 24 asked them not to, then obviously we will</p>

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1 questions.

2 MR. HARVEY: I just have one.

3 REDIRECT EXAMINATION

4 BY MR. HARVEY:

5 Q. Could you, would you base an arrest, a

6 violation of the Buffer Zone Law based on a

7 person looking down and you assuming that

8 that's not consent?

9 MS. FACHER: Objection.

10 Q. Would that be enough for you?

11 MR. PORTER: Objection.

12 MS. FACHER: Objection.

13 A. It would if all the other requirements of the

14 law were in place.

15 Q. Is it always easy to determine whether a

16 person is looking down or looking away?

17 MR. PORTER: Objection.

18 MS. FACHER: Objection.

19 A. I think it's easy, that's one of the easy

20 things to sort determine here, is consent.

21 I think you can clearly tell when a person is

22 irritated by the approach of the protesters.

23 Q. But if a person is staring straight ahead and

24 doesn't indicate one way or another consent

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1 isn't an issue, is it?

2 MR. PORTER: Objection.

3 A. Well, I think it is because they're avoiding

4 that person altogether. If there was consent

5 I would think, in my interpretation, they

6 would be looking towards them shaking their

7 head possibly in agreement and putting their

8 hand out to get a flier. I think if you

9 don't pay any attention to that person when

10 they're clearly up right on your shoulder,

11 then I wouldn't think that there's any

12 consent there. I think consent of anything

13 here sometimes can be easily judged by some

14 of the patients going in.

15 Q. It's a matter of interpretation by the

16 officers?

17 A. Yes.

18 MR. HARVEY: All right. I have

19 nothing else. Thank you.

20 MR. PORTER: No more questions.

21 Thank you.

22 (Deposition concluded at 12:30 p.m.)

23

24

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2 COMMONWEALTH OF MASSACHUSETTS)

3 COUNTY OF MIDDLESEX } ss.

4

5

6 I, Grace E. Holden, a Registered

7 Professional Reporter and Notary Public

8 within and for the Commonwealth of

9 Massachusetts, do hereby certify:

10 That WILLIAM B. EVANS, the witness

11 whose deposition is hereinbefore set forth,

12 was duly sworn by me and that such deposition

13 is a true and accurate record, to the best of

14 my knowledge, skills, and ability, of the

15 testimony given by such witness.

16 I further certify that I am not related

17 to any of the parties in this matter by blood

18 or marriage and that I am in no way

19 interested in the outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto set

21 my hand and affixed my Notarial Seal this

22 day of June, 2002.

23

24

Grace E. Holden, CSR, RPR, Notary Public

My Commission Expires:

November 8, 2007

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CERTIFICATE

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